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10/623,127	07/18/2003	Konstantin V. Rodyushkin	10559-831001	4494
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FISH & RICHARDSON, PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			LE, BRIAN Q	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/623,127	RODYUSHKIN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Brian Q. Le	2624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 04 October 2007.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-29 is/are rejected.
- 7) Claim(s) 30-32 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                             |                                                                   |
|-------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                 | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | Paper No(s)/Mail Date: _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|                                                                                                             | 6) <input type="checkbox"/> Other: _____                          |

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/04/2007 has been entered.

***Response to Amendment and Arguments***

2. Applicant's arguments, see Remarks, filed 10/04/2007, with respect to the rejection(s) of claim(s) 1-29 under 35 U.S.C. 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Prokoski U.S. Patent No. 7,027,621.

***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. The USPTO "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" (Official Gazette notice of 22 November 2005), Annex IV, reads as follows:

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs which

impart functionality when employed as a computer component. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works and a compilation or mere arrangement of data.

When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994) (claim to data structure stored on a computer readable medium that increases computer efficiency held statutory) and *Warmerdam*, 33 F.3d at 1360-61, 31 USPQ2d at 1759 (claim to computer having a specific data structure stored in memory held statutory product-by-process claim) with *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory).

In contrast, a **claimed computer-readable medium encoded with a computer program (emphasis added)** is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See *Lowry*, 32 F.3d at 1583-84, 32 USPQ2d at 1035.

5. Claim(s) 18-26 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter as follows.

Claim 18 recites "A computer program product for defining a deformable model for facial recognition, the computer program product comprising instructions stored on a computer-readable storage device that when executed, cause a data processing apparatus to: ..." embodying functional descriptive material. However, the claim is not orderly written as emphasized above, that is to write a computer readable storage medium embodies/stores a computer executable process, is thus non-statutory for that reason (i.e., "When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of

technology permits the function of the descriptive material to be realized” – Guidelines Annex IV). The examiner suggests amending the claim language as “A computer-readable storage device storing a computer program product comprising instructions that when executed, cause a data processing apparatus to: ...” or equivalent in order to make the claim statutory. Any amendment to the claim should be commensurate with its corresponding disclosure.

Claims not specifically addressed are rejected because they are dependent of the rejected claims.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Tian et al. U.S. Patent No. 6,879,709 and Prokoski U.S. Patent No. 7,027,621.

Regarding claim 1, Tian teaches a medium bearing a deformable model (detect an expression of the face by using model to detect the changes of facial images by the process of normalization since normalization is known to compensate changes and variance of position, pose, scale and illumination) (abstract; column 9, lines 20-25; FIG. 13; and column 1, line 63 to column 2, line 4) configured to enable a machine to:

Estimate positions of four points (detect position of six points) (column 8, line 29-40) defined by X and Y coordinates (column 13, lines 1-4), each of the points representing a facial element position in a digital image (column 13, lines 5-15),

Tian does not explicitly teach the compute transformation parameters that represent a transformation from the deformable model to the positions of the four points, and estimate a further deformable model based on the estimated positions of the four points and the computed transformation parameters.

Prokoski also teaches a method of detecting deformable model of the face (detecting changes of facial) (FIG. 7) wherein compute transformation parameters (determine changes parameters such as conditional levels and medical status) (FIG. 17, elements 316, 340, 342, and 344) that represent a transformation from the deformable model (represent the changes) (column 6, lines 30-45) to the positions of the four points (FIG. 6), and estimate a further deformable model based on the estimated positions of the four points and the computed transformation parameters (analysis after assessments) (FIG. 17, elements 330, 332, 334, and 336). Modifying Tian's method of detecting deformable model according to Prokoski would be able to compute transformation parameters that represent a transformation from the deformable model to the positions of the four points, and estimate a further deformable model based on the estimated positions of the four points and the computed transformation parameters. This would improve processing because it would provide a robustness of analysis by automated assessment of multiple indicators and would provide a high reliability by using a sufficiently wide range of condition monitoring indicators (column 5, lines 20-34) and therefore, it would have been obvious to one of the ordinary skill in the art to modify Tian according to Prokoski.

For claim 2, Tian also teaches the medium bearing a deformable model in which the four points include a first point designating a center of a left eye (column 13, line 47).

Regarding claim 3, Tian further teaches the medium bearing a deformable model in which four points further include a second point designating a center of a right eye (column 13, lines 47-48).

Referring to claim 4, Tian discloses the medium bearing a deformable model in which the four points further include a third point designating a left corner of the mouth (column 9, line 27).

Referring to claim 5, Tian discloses the medium bearing a deformable model in which the four points further include a fourth point designating a left corner of the mouth (column 9, lines 27-28).

For claim 6, Tian shows the medium bearing a deformable model comprising a variable representing a distance between the first and second points (distance between face characteristic points would include distance between the first and the second points) (column 8, lines 45-48).

Regarding claim 7, Tian further shows the medium bearing a deformable model further comprising a variable representing a distance between the third and the fourth points (distance between face characteristic points would include distance between the third and the fourth points) (column 8, lines 45-48).

For claim 8, Tian teaches the medium bearing a deformable model further comprising a variable representing a distance between eyes and mouth (column 9, lines 25-30).

Regarding claim 9, as discussed in claim 1, Tian teaches a method comprising:

Determine a deformable model (column 11, lines 23-25) including eye positions and mouth positions (column 11, lines 20-25) for a frame of a digital image sequence (column 12, lines 10-12); and

Estimating a deformable model include eye positions and mouth positions (estimates characteristic facial features points in each detected face would include mouth and eye positions) (column 8, lines 5-10) for a frame of the digital image sequence (column 9, lines 44-48 and column 10, lines 30-35) and

Computing transformation parameters (compute the location of the **salient landmarks/points**) (column 12, lines 18-25) that represent a transformation from the deformable model (variability/change of shape properties of pose/expression model) (column 9, line 65 to column 10, line 14) for the frame to the deformable model of the frame (column 9, lines 44-48 and column 10, lines 30-35).

As discussed in claim 1, Prokoski further teaches an estimation of a subsequent deformable model of a subsequent frame of the digital image sequence (correlation of differences i.e. movements at different time/different frames of image sequence) (column 11, lines 39-42 and column 21, lines 40-56); compute transformation parameters (determine changes parameters such as conditional levels and medical status) (FIG. 17, elements 316, 340, 342, and 344) that represent a transformation from the deformable model for the frame to the subsequent deformable model of the subsequent frame (changes of movements, expressions ..etc between frames) (column 21, lines 40-56); and estimating a further subsequent deformable model (analysis of changes such as movements or expressions after assessments) (FIG. 17, elements 330, 332, 334, and 336), for a further subsequent frame of the digital image sequence

based on the subsequent deformable model (between frames) (column 21, lines 40-56) and the computed transformation parameters (determine changes parameters such as conditional levels and medical status). (FIG. 17, elements 316, 340, 342, and 344). Modifying Tian's method of detecting deformable model according to Prokoski would be able to compute transformation parameters that represent a transformation from the deformable model to the positions of the four points, and estimate a further deformable model based on the estimated positions of the four points and the computed transformation parameters. This would improve processing because it would provide a robustness of analysis by automated assessment of multiple indicators and would provide a high reliability by using a sufficiently wide range of condition monitoring indicators (column 5, lines 20-34) and therefore, it would have been obvious to one of the ordinary skill in the art to modify Tian according to Prokoski.

Referring to claim 10, Tian teaches the method wherein computing the transformation parameters (compute the location of the **salient** landmarks/points) (column 12, lines 18-25) includes determining optimal values for the transformation parameters such that the value of an objective function based on the transformation parameters is minimized (eliminates complicated degree of freedom/normalization) (column 10, lines 10-14 and column 12, lines 40-55).

For claim 11, Tian further teaches the method in which the eye positions and the mouth positions are represented by four points defined by x and y coordinates (column 13, lines 1-4; FIG. 5B and FIG. 6).

Regarding claims 12-15, Tian teaches the method which the four points comprise a first point, second point, third point and fourth point to designate left eye center, right eye center, left mouth, and right mouth and uses labeling technique as Pn (P1, P2, P3 and P4) to label each point

(FIG. 5B). Tian does not explicitly use the labeling system  $i = 1$ ,  $i = 2$ ,  $i = 3$ , and  $i = 4$ . However, it would have been obvious to use also use  $P_n$  system or  $I = n$  system to label each region of the image for better recognition each region of the image in order to help the system to automatically label facial expressions and facilitating retrieval base on facial expressions (column 7, lines 60-64). This would improve processing and therefore, it would have been obvious to one of the ordinary skill in the art to modify Tian to implement a labeling method.

Regarding claim 16, Tian teaches the method in which the four points of the subsequent deformable model (column 9, lines 44-48 and column 10, lines 30-35) are determined by six parameters (distance's parameters and histogram's parameters) (column 13, lines 20-44) and the deformable model (column 13, lines 45-47).

Referring to claim 17, Tian teaches the method of in which the six parameters comprise:

- a first parameter representing a distance increase between eyes (distance between left and right eyes) (column 12, lines 60-67);
- a second parameter representing a distance increase between eyes and mouth (column 13, lines 25-28);
- a third parameter representing a distance increase between mouth corners (column 13, lines 30-33);
- a fourth parameter representing a rotation angle (column 13, lines 60-67);
- a fifth parameter representing a shift value along an X axis (L or N) (FIG. 6);
- a sixth parameter representing a shift value along a Y axis (M or K) (FIG. 6).

Regarding claim 18, please refer back to claim 9 for further teachings and explanations.

In addition, Tian teaches a computer program product comprises instruction stored on a

computer-readable storage device (column 7, lines 57-60 and column 9, lines 49-50) to perform the aforementioned limitations.

For claims 19-20, please refer back to claims 10-11 respectively for further teachings and explanations.

For claims 21-24, please refer back to claims 12-15 respectively for further teachings and explanations.

Regarding claim 25, Tian teaches the product in which the four points (FIG. 9, element 905) of the subsequent deformable model (column 9, lines 45-48 and column 1, lines 23-25) are determined, at least in part, based on six parameters (distances) (column 15, lines 1-21).

For claim 26, please refer back to claim 17 for further teachings and explanations.

For claim 27, as discussed in claim 9, Tian teaches a method comprising:

Receiving a first digital image in a sequence of digital images (FIG. 4, element 410) and eye and mouth coordinates (FIG. 5B);

Outputting (column 12, lines 5-10) eye and mouth coordinates on a subsequent digital image in the sequence of digital images (FIG. 6).

For claim 28, as discussed in claim 9, Tian further teaches the method in which receiving further comprises estimating a base face model and the base face model's transformation parameters  $T'$  by the eye and mouth coordinates (transform characteristic points of a face would include transformation parameters of the eye and the mouth coordinates) (column 12, lines 40-56).

Regarding claim 29, Tian also teaches the method in which outputting comprises:

Calculating an initial model M as a transformed base model  $M_b$  using transformation parameters  $T'$  (that is the concept of transformation process) (column 5, lines 34-38 and column 12, lines 55-56);

Rotating the subsequent image to  $I(x, y)$  to generate a normalized model M (column 13, line 55 to column 14, line 8).

***Allowable Subject Matter***

8. Claims 30-32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and overcome the objection of the claims.

**Contact Information**

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Q. Le whose telephone number is 571-272-7424. The examiner can normally be reached on 8:30 A.M - 5:30 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew Bella can be reached on 571-272-7778. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Brian Le  
Primary Examiner  
December 11, 2007